AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN TORT — WHO IS LIABLE FOR NEGLIGENCE OF DRIVER OF HIRED MOTOR VEHICLE. — The defendant hired an automobile and a chauffeur from A for three months. While driving the defendant, the chauffeur negligently ran over plaintiff's intestate. *Held*, that the defendant is not liable. *McNamara* v. *Leipzig*, 125 N. E. 244 (N. Y.).

The defendant hired an auto-truck and a chauffeur from A for use in his business. The chauffeur, while engaged in delivery work for the defendant, negligently injured the plaintiff. *Held*, that the defendant is liable. *Finegan* v. *Piercy Contracting Co.*, 178 N. Y. Supp. 785 (App. Div.).

For a discussion of these cases, see NOTES, p. 714, *supra*.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — LEASEHOLD INTERESTS — LANDLORD'S RIGHT OF ENTRY. — The landlord, under a lease providing for a right of entry for condition broken, becomes entitled to enter for failure to pay rent and royalties. The tenant becomes bankrupt, and the landlord then seeks to enter against the bankrupt's trustee, in possession. *Held*, that he may do so. *Matter of Elk Brook Coal Co.*, 44 Am. B. R. 283 (Dist. Ct. Pa., 1919).

For a discussion of this case, see NOTES, p. 709, *supra*.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — VOLUNTARY PROCEEDINGS INSTITUTED IMMEDIATELY PRIOR TO AN EXPECTED INHERITANCE. — An insolvent debtor filed a voluntary petition in bankruptcy knowing that his mother, who had made a will in his favor, could live only a few days. A creditor moved to set aside the adjudication on the ground that this was fraudulent. *Held*, that the motion be denied. *Matter of Swift*, 44 Am. B. R. 211 (Dist. Ct. N. D. Ga.).

It was one of the prime purposes of the Bankruptcy Act to enable an honest insolvent debtor to be discharged from creditors' claims against him upon giving up all his non-exempt property. And the Act does not restrict the filing of petitions to cases where the debtor has no hope of ever being solvent again. If the court has jurisdiction, no creditor has any standing to object to a voluntary petition by a natural person. *In re Carlton*, 115 Fed. 246; *In re Ives*, 113 Fed. 911. If any injustice is done in the principal case, it seems to flow from the fact that the creditor derives no benefit from the debtor's *spes successionis* which had become almost a certainty at the time of the petition. This result, however, follows from the doctrine that a *spes*, be it ever so certain of fulfillment, is not property, and hence that it does not pass to the trustee in bankruptcy. *Moth* v. *Frome*, 1 Amb. 394. But this doctrine of the nature of a *spes* is not confined to courts of bankruptcy. Thus an expectancy is not property which can be the subject of a trust, or which can be reached by a creditor's bill. *In re Ellenborough*, [1903] 1 Ch. 697; *Smith* v. *Kearney*, 2 Barb. Ch. 533. Perhaps the fact that no previous decision seems to have raised the point involved in the principal case shows that it is not one of such grave practical importance as to demand the immediate change of our bankruptcy law. As the law stands, the decision seems unassailable.

BANKS AND BANKING — NATIONAL BANK ACT — USURY — CONSTRUCTION OF NATIONAL BANK ACT AUTHORIZING INTEREST AT RATE ALLOWED BY LAWS OF THE STATE. — The defendant national bank discounted the plaintiff's short-time note at eight per cent, taking interest in advance. The National Bank Act provides that national banks may charge interest, "at the rate allowed by the laws of the state where the bank is located," and declares that knowingly charging a greater rate is usury. (REV. STAT., §§ 5197, 5198.) Eight per cent was the maximum interest rate allowed by statute in Georgia, where the defendant bank was located (1910, GA. CODE, §§ 3426, 3436); but

the Georgia Supreme Court had held that taking interest upon short-time paper in advance at eight per cent was usurious. (*Loganville Banking Co.* v. *Forrester*, 143 Ga. 302, 84 S. E. 961.) The plaintiff, having sued in the state court to recover the penalty allowed by the National Bank Act, on *certiorari*, *Held*, that the transaction does not violate the statute. Pitney, Clarke, and Brandeis, JJ., dissenting. *Evans* v. *National Bank of Savannah*, U. S. Sup. Ct., No. 67, October Term, 1919.

The sole question seems to be what is meant by the words of the National Bank Act, "at the rate of interest allowed by the laws of the state where the bank is located." In determining what are the laws of a state, the Supreme Court usually follows the latest state decision upon the question. *Union National Bank* v. *Louisville, Etc. R. R. Co.*, 163 U. S. 325; *Bucher* v. *Cheshire R. R. Co.*, 125 U. S. 555. The "rate of interest" has been construed to include the mode of charging interest. Where a state statute declared that interest compounded oftener than annually was usury, a note bearing interest compounded semi-annually was held usurious under the National Bank Act, although the total interest did not exceed the maximum allowed by State law. *Citizens National Bank* v. *Donnell*, 195 U. S. 369. Furthermore, the obvious intent of the framers of the National Bank Act was that national banks should charge as much but not more than state banks. In favor of the principal case, it may be said that, contrary to the Georgia case, the weight of authority and long-established business custom is that the taking of interest in advance at the maximum rate is not usury. *Bank of Newport* v. *Cook*, 60 Ark. 288, 30 S. W. 35; *Stark & Wales* v. *Coffin*, 105 Mass. 328. But the majority opinion does not purport to question the correctness of the Georgia decision. Thus the dissenting opinion seems the better one.

BANKS AND BANKING — NATIONAL BANKS — POWER OF NATIONAL BANK TO ACQUIRE AND OPERATE A STREET RAILWAY. — A street railway was built over certain streets in a village under a twenty-five year franchise granted by the village. The railway was twice placed in the hands of a receiver, and under the second receivership was sold to a national bank, which bought in the property in order to protect the bonds of the company which it owned. The bank continued to operate the road for a short time. Failing to find a purchaser, it was about to discontinue operation and dismantle the road. The village brought suit to enjoin the discontinuance. The bank pleaded its lack of power to assume the obligations of the franchise to operate the road. *Held*, that the bank be authorized to discontinue operation and dismantle the road. *Gress* v. *Village of Ft. Loramie*, 125 N. E. 112 (Ohio).

For a discussion of this case, see NOTES, p. 718, *supra*.

CONFLICT OF LAWS — CAPACITY — NOTE MADE BY MARRIED WOMAN IN ONE STATE PAYABLE IN ANOTHER. — An action was brought in Virginia upon a promissory note executed and delivered by a married woman in Tennessee, where she was without capacity to contract. The note was payable in Virginia, where the disabilities of coverture had been removed. *Held*, that coverture is no defense. *Poole* v. *Perkins*, 101 S. E. 240 (Va.).

A fair degree of unanimity has obtained with reference to the question of the controlling law as to capacity to enter into a personal contract. In the United States, in case of conflict between the law of the domicile and the law of the place where the contract is made, the question is resolved with reference to the latter. *Bell* v. *Packard*, 69 Me. 105; *Milliken* v. *Pratt*, 125 Mass. 374. And as the existence of a contract must depend, in our system of territorial law, upon the effect conferred by the law in force where the agreement is entered upon, the *lex loci contractus* controls, as to capacity, in case of con-